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OFFICE OF PETITIONS

In re Application of	:	
Simpson et al.	:	
Application No. 10/056,687	:	DECISION ON PETITION
Filed: January 24, 2002	:	
Attorney Docket No. 10008198-1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 14, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 20, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 21, 2007. A Notice of Abandonment was mailed April 30, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of \$1,540.00 charged to petitioner's deposit account as authorized, and (3) an adequate statement of unintentional delay.

Petitioner also submitted a Request for Continued Examination (RCE) with the instant petition. However, an applicant cannot request continued examination of an application until after prosecution in the application is closed. See 37 CFR 1.114(a). Prosecution in an application is closed if the application is under appeal, or the last Office action is a final action (37 CFR 1.113), a notice of allowance (37 CFR 1.311), or an action that otherwise closes prosecution in the application (e.g., an Office action under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935)). The last Office action in the instant application was a non-final action. Accordingly, an RCE would not be proper.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. In accordance with 37 CFR 1.34(a),

the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Further, the address given on the petition differs from the new address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2157 for appropriate action by the Examiner in the normal course of business on the reply received.

A handwritten signature in cursive script, reading "Liana Walsh".

Liana Walsh
Petitions Examiner
Office of Petitions

cc: Michael Dryja
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